

S.B.CIVIL WRIT PETITION NO.296/2003.
(Smt. Bina v. Municipal Corporation, Jodhpur & Others)

DATE OF ORDER: JANUARY 14, 2005.

HON'BLE MR. JUSTICE R.P.VYAS

Mr. Mahesh Bora, for Petitioner.
Mr.R.S.Saluja, for Respondents.

The instant petition has been filed by the petitioner, praying, inter alia, that the order dated September 1, 2001 (Annex.1), and the order dated November 15, 2002 (Annex.3), passed by the Judge, Labour Court, Jodhpur may be quashed and set aside.

The facts giving rise to the instant petition are that the petitioner was appointed as Safaiwali on May 22, 1986 vide Order F./PA/Commi/86-87/1443 on the basis of daily wages. She was given temporary appointment for a period of one month. Thereafter, vide order dated July 21, 1986, the appointment was given for 86 days. The petitioner worked on different muster rolls from November, 1986 to December, 1987. The services of the petitioner were terminated in the month of January, 1988.

On January 9, 1996, an advertisement was issued for the post of Safaiwala in all the leading newspapers. There were 774 posts. The petitioner also applied for the said post. It was stated in the advertisement itself that the preference will be given to those persons who were retrenched by the Municipal Corporation or those who have completed 240 days in a year. It was also mentioned in the advertisement that after the interview of all persons, who have applied, the result will be declared by way of lottery.

The petitioner was called through letter No.3865 dated 11.7.96 for screening the original records. Thereafter, the result was declared on July 19,

1996 and the petitioner's name did not appear in the list of selection.

Thereafter, the petitioner approached the respondents authorities that being the retrenched employee by virtue of Section 25 (4) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act, 1947'), the appointment should be given to her before giving the same to any other person. But nothing has been done and, thereafter, the petitioner moved an application before the Conciliation Officer.

Ultimately, the conciliation failed and the Conciliation Officer sent the failure report to the State Government. The State Government sent the reference to the Labour Court, Jodhpur for adjudication.

After receiving the notice of reference, the petitioner appeared before the Labour Court on October 25, 2000 and prayed for time to file the memo of claim. The petitioner failed to file the memo of claim and the next date February 23, 2001 was given for filing the same. On February 23, 2001, the counsel for the petitioner appeared on her behalf and prayed for time. The Court adjourned the matter to May 11, 2001 for filing the memo of claim. On May 11, 2001, the power was filed by another counsel on behalf of the respondent and the petitioner's counsel again sought time for filing the memo of claim. The matter was posted for July 25, 2001. On that date, the counsel was present, but the memo of claim was not filed and the last chance was given to file the same on August 14, 2001. On August 14, 2001, the Presiding Officer was not there and claim was also not filed and the matter was adjourned to September 1, 2001. On September 1, 2001, an application was moved on behalf of the petitioner that the last chance may be given, because the petitioner has gone outside and the memo of claim was ready, but was not signed by the applicant, therefore, it could not be filed. The petitioner prayed for one more short adjournment, but the Court refused to grant the short

adjournment and no-dispute reference was passed on September 1, 2001.

On September 11, 2001, the petitioner moved restoration application along with the claim. Notices were sent by the Court. After receiving the notice, the non-applicant prayed for time for filing the reply. But no reply was filed. Ultimately, vide order dated November 15, 2002, the restoration application filed by the petitioner was dismissed.

Being aggrieved by the orders dated September 1, 2001 and November 15, 2002, the petitioner has filed the instant petition.

Heard learned counsel for the parties. I am of the view that a little more sensitive approach is required to be adopted by the Courts in process of dispensation of justice. It is not at all desirable to drive out a party out of Court by way of punishment for whatever reason.

It is well established principle that every court has inherent power to act expedite and justitiate to do real and substantial justice, for which it exists. It has always been anxiety of the Court to decide an issue on merit instead of driving out a party from the Court for one or the other technical reason.

Even if the party was remiss in complying with the directions of the Court, the matter could have been restored on payment of cost. Refusal to restore a matter is beyond the result in a meritorious matter bring thrown out and the cause of justice will be defeated.

The Apex Court in Collector Land Acquisition v. Mst. Katiji and Others (AIR 1987 SC 1353) has observed as under :-

“It must be grasped that judiciary is respected not on account of its powers to legalize injustice on technical ground, but it is capable of removing injustice and is expected to do so.”

Thus, I am of the view that Respondent No.1 should have decided the

reference on merits and should not have rejected the same on technical grounds.

It is the duty of the Labour Court and the Tribunal to adjudicate the matter, meaning thereby that both the parties should be given an adequate opportunity to put forward their grievances before the Labour Court and, thereafter, the matter should be adjudicated accordingly. Thus, the Legislature has cast the duty on the Labour Court to adjudicate the matter after making a fact finding enquiry and affording an opportunity of hearing to both the parties.

For the reasons mentioned above, the instant writ petition deserves to be allowed the orders dated September 1, 2001 (Annex.1) and dated November 15, 2002 (Annex.3) deserves to be quashed and set aside.

Accordingly, the instant petition is allowed and the orders dated September 1, 2001 (Annex.1) and dated November 15, 2002 (Annex.3), passed by the Respondent No.3 – Labour Court, Jodhpur are set aside.

The Respondent No.3, Labour Court, Jodhpur, is directed to decide the reference afresh on merits after giving an opportunity of hearing to both the parties. Both the parties are directed to appear before the Respondent No.3 – Labour Court, Jodhpur, on February 14, 2005.

(R.P.VYAS), J.

scd.